636.

SUPREME COURT OF THE UNITED STATES.

No. 125.

WILLIAM E. MASON, PLAINTIFF IN ERROR,

vs.

HENRY VAN PHUL AND THEODORE L. McGILL.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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GIDEON, print.

UNITED STATES OF AMERICA,
Northern District of Illinois.

Pleas in the Circuit Court of the United States for the district of Illinois, held at the city of Springfield, in the district aforesaid, before the Honorable Thomas Drummond, judge of the district court of the United States, for said district of Illinois, and in the absence pro tempore of the Honorable John McLean, one of the justices of the Supreme Court of the United States of America, sole judge of said circuit court, on Wednesday the twelfth day of January, in the year of our Lord one thousand eight hundred and fifty-three, and of our independence the seventy-seventh year.

HENRY VAN PHUL and
THEODORE L. McGILL
vs.
WILLIAM E. MASON. } Ejectment.

Be it remembered, that heretofore, to wit, on the seventeenth day of December, in the year of our Lord one thousand eight hundred and forty-nine, in the December term, A. D. 1849, of said circuit court for said district of Illinois, came the said Henry Von Phul and Theodore L. McGill, plaintiffs in this suit, by H. O. Merriman, esq., their attorney, who filed in open court their bond for costs, declaration and notice, in said entitled cause, which said bond, declaration and notice are in the words and figures following, to wit:

In the Circuit Court of the United States, in and for the district and State of Illinois.

HENRY VAN PHUL and
THEODORE L. McGILL
vs.
WILLIAM E. MASON.

Of the December term, in the year of our Lord one thousand eight hundred and forty-nine.

UNITED STATES OF AMERICA,
District and State of Illinois.

Henry Von Phul and Theodore L. McGill, plaintiffs in this suit, citizens of the State of Missouri, one of the United States of America, complain of William E. Mason, defendant in this suit, who is a citizen and inhabitant of the State of Illinois, in the United States of America, of a plea wherefore he, the said defendant, with force and arms, &c., entered into the following described premises: For that heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and forty-eight, the said plaintiffs were

possessed of certain premises situated in the county of Peoria, in the said State of Illinois, and described as follows, to wit: Lot No. fourteen, in the village of Peoria, confirmed to Jacques Mette by the confirmatory act of Congress, approved 3d March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," and described as follows, to wit: The lot containing twenty-seven thousand four hundred and forty-nine square feet, and seven hundredths of a square foot, surveyed and designated as covered by claim number fourteen, being situated in the southeast fractional quarter of fractional section nine, in township eight north, of range eight east of the fourth principal meridian, Illinois, according to the survey approved 1st September, 1840, by the surveyor of public lands in the States of Illinois and Missouri; and being so possessed thereof, the said defendant afterwards, to wit, on the second day of January, in the year of our Lord one thousand eight hundred and forty-eight, entered into such premises, and that he unlawfully withholds from the plaintiffs the possession thereof; and said plaintiffs aver that they claim title to said premises in fee, and that said plaintiffs are citizens and inhabitants of the State of Missouri, in the United States of America, and that he, the said defendant, is a citizen and inhabitant of the State of Illinois, in the United States of America. And said plaintiffs further aver, that the aforedescribed premises, being the matter in dispute, exceed, exclusively of costs, the sum or value of five hundred dollars.

Wherefore said plaintiffs say that they are injured and have sustained damages to a large amount, to wit, one thousand dollars, and therefore they sue, &c.

H. O. MERRIMAN,
Attorney for Plaintiffs.

To the above named defendant:

Take notice that—

1. At the December term, A. D. 1849, of the circuit court of the United States within and for the district and State of Illinois, now in session at the city of Springfield, in said State of Illinois, on the eighteenth day of December, A. D. one thousand eight hundred and forty-nine, or as soon thereafter as counsel can be heard, a declaration of which the above is a copy will be filed in said court.

2d. That upon filing the same, a rule will be entered requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such rule.

3d. That if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiffs will recover possession of the premises described in said declaration.

Yours, &c.,
H. O. MERRIMAN,
Attorney for Plaintiffs.

Dated Dec. 5, 1849.

STATE OF ILLINOIS, *County of Peoria, ss:*

Abraham B. Fash, being first duly sworn, says, that on this 10th day of December inst. he delivered to the within named William E. Mason, personally, a copy of the within and foregoing declaration and notice.

ABRAHAM B. FASH.

Subscribed and sworn to before me, clerk of the circuit court of said county.

[SEAL.] Witness my hand and seal of said court, this 10th day of Dec., 1849.

JACOB GALE, *Clerk.*

Endorsed: Filed Dec. 17, 1849.

WM. POPE, *C.*

UNITED STATES OF AMERICA,
State and District of Illinois.

Circuit Court, December term, A. D. 1849.

Know all men by these presents, that I, H. O. Merriman, of the county of Peoria, and State and district of Illinois, am held and firmly bound unto William E. Mason, or to the officers of the circuit court of the United States, for the district of Illinois, in the sum of five hundred dollars, to be paid to said Mason, or to the said officers aforesaid, their certain attorneys, heirs, executors, administrators or assigns, or successors in office; to which payment well and truly to be made, I do bind myself, my heirs, executors and administrators, and every of them, jointly, severally and firmly by these presents.

Witness my hand and seal, the 18th day of December, in the year of our Lord one thousand eight hundred and forty-nine.

The condition of the above obligation is such, that whereas Henry Von Phul and Theodore L. McGill have this day, to wit, at the date of the above written, instituted a suit in the said circuit court of the United States for the district of Illinois, against said William E. Mason: Now if the said Von Phul and McGill, their heirs, executors or administrators, shall well and truly discharge all costs that may accrue and be adjudged against him, the said plaintiff, in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in their behalf, if judgment shall pass against the said defendant, and the costs, and fail to be collected of said defendant, and all costs which may have accrued in failure of the prosecution of said suit to effect, then this obligation shall be void, otherwise of full force and effect.

H. O. MERRIMAN. [SEAL.]

Endorsed: Filed Dec. 17, 1849.

WM. POPE, *Cl'k.*

Whereupon, on the said seventeenth day of December, in the December term, A. D. 1849, of said court, in the record of the proceedings thereof in the said cause, the following rule to plead was entered, to wit:

HENRY VON PHUL and
THEODORE L. McGILL
vs.
WILLIAM E. MASON. } Ejectment.

This day came the said plaintiffs, by their attorney, and filed their declaration in ejectment, and the notice thereto attached, and upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant, it is ordered, on motion of said plaintiffs, by their said attorney, that defendant plead thereto in twenty days, or that his default be entered.

And on the next day, to wit, the eighteenth day of December, in the year of our Lord one thousand eight hundred and forty-nine, came the said defendant William E. Mason, by E. N. Powell his attorney, and filed in said court his plea, in said cause, which is in the words and figures following, to wit:

Circuit Court United States, district of Illinois, Dec'r term, A. D. 1859.

HENRY VON PHUL and
THEODORE L. McGILL
vs.
WILLIAM E. MASON.

And the said defendant, by E. N. Powell, his attorney, comes and defends the force and injury, when, &c., and says that he is not guilty of unlawfully withholding the said premises in said declaration mentioned, and in manner and form as is alleged against him, and this he prays may be inquired of by the country, &c.

E. N. POWELL,
Att'y for Def't.

Endorsed: Filed Dec'r 18th, 1849.

WM. POPE, *Cl'k.*

And afterwards, to wit, on Friday, the third day of January, in the year of our Lord one thousand eight hundred and fifty-one, of the December term, A. D. 1850, of said court, in the record of the proceedings thereof in said cause, the following judgment was entered, to wit:

HENRY VON PHUL and
THEODORE L. McGILL
vs.
WILLIAM E. MASON. } Ejectment.

This day came the plaintiffs, by their attorneys, and issue having been joined, thereupon came a jury, to wit: Stephen R. Elwell, Charles L. Jones, Daniel Ragsdale, T. B. Farnsworth, James H. English, Isaac Norman, E. W. Brewster, John Armstrong, John E. Anderson, S. B. Moody, E. C. A. Cushman, and Dennis Rockwell, who being

duly elected, tried and sworn, well and truly to try the issue joined, upon their oaths say: "We, the jury, find the defendant guilty of unlawfully withholding from the plaintiffs the possession of the following described premises, to wit: beginning at a post on the northwesterly edge of First street, which is the southeasterly side of said lot, from which post the most southerly corner of said lot bears south forty-three and one-half degrees ($43\frac{1}{2}°$) west, eighteen feet; thence north forty-two and one-half degrees ($42\frac{1}{2}°$) west, forty-three feet; thence south fifty and one-quarter degrees ($50\frac{1}{4}°$) west, twenty-one feet to a post in the southwesterly edge of said lot; thence north forty-six and one-half degrees ($46\frac{1}{2}°$) west, eighty-three feet to a post; thence north fifty and one-quarter degrees ($50\frac{1}{4}°$) east, eighty-five and one-half ($85\frac{1}{2}$) feet to a post; thence south forty-two and one-half degrees ($42\frac{1}{2}°$) east, one hundred and eighteen feet to a post; thence south forty-three and one-half ($43\frac{1}{2}°$) degrees west, fifty-eight feet to the place of beginning; being the premises in the plaintiff's declaration described. We further find that, at the time of the commencement of this suit, the said plaintiffs were, and still are, the owners in fee simple of the above described premises, and we assess their damages at one cent."

It is therefore considered and adjudged by the court, that the said plaintiffs recover against the said defendants the possession of the above described premises. It is further ordered that the said plaintiffs recover of and from said defendant their damages of one cent, according to the verdict of the jury, and that they have a writ of possession for said premises and an execution for costs.

And afterwards, to wit, on Wednesday, the seventeenth day of December, in the year of our Lord one thousand eight hundred and fifty-one, in the December term, A. D. 1851, of said court, in the record of the proceedings thereof in said cause, the following order was entered, to wit:

HENRY VON PHUL and THEODORE L. McGILL vs. WILLIAM E. MASON. } Ejectment.

This day came the defendant by his attorney, and moved the court to vacate the judgment in this cause entered at the December term, A. D. 1849, of this court, and to grant him a new trial under the provisions of the statute. And it appearing to the satisfaction of the court that the said defendant has paid all the costs and damages recovered and taxed in this cause, it is therefore considered and adjudged by the court that said judgment be vacated, set aside, and for nothing held, and that a new trial be had herein.

And on the next day, to wit, Thursday, the eighteenth day of December, in the year of our Lord one thousand eight hundred and fifty-one, in the said December term of said court, in the record of the proceedings thereof in said cause, the following order was entered, to wit:

HENRY VON PHUL and
THEODORE L. McGILL
vs.
WILLIAM E. MASON. } Ejectment.

This day came the parties by their attorneys, and it is ordered, by their consent, that this cause be continued until the next term of this court.

And afterwards, to wit, on Wednesday, the twenty-first day of July, in the year of our Lord one thousand eight hundred and fifty-two, in the July term, A. D. 1852, of said court, in the record of the proceedings thereof in said cause, the following order was entered, to wit:

VON PHUL and McGILL
vs.
WILLIAM E. MASON. } Ejectment.

No one appearing for defendant, it is ordered, on motion of plaintiffs, by their attorney, that this cause be continued.

And afterwards, to wit, on Wednesday, the twelfth day of January, in the year of our Lord one thousand eight hundred and fifty-three, in the December term, A. D. 1852, of said court, in the record of the proceedings thereof, in said cause, the following agreement of the parties and judgment were entered, to wit:

VON PHUL and McGILL
vs.
WILLIAM E. MASON. } Ejectment.

It is agreed by the parties to this suit, that the defendant shall be allowed until the first day of the next term of this court to file his bill or petition for assessment of the value of his improvements upon the property in controversy in this suit; to have the same effect as if now presented.

HENRY VON PHUL and
THEODORE L. McGILL
vs.
WILLIAM E. MASON. } Ejectment.

This day came the parties, by their attorneys, and issue being joined, by agreement, a jury is waived, and this cause is submitted to the court for trial; and after hearing the evidence (arguments?) of counsel thereon, the court finds the defendant guilty of unlawfully withholding from the possession of the plaintiffs possession of the following described premises, to wit: Beginning at a post on the northwardly edge of First street, which is the southeasterly side of said lot, from which post the most southwardly corner of said lot bears south forty-three and one half degrees west, eighteen (18) feet; thence north forty-two and a half degrees west, forty-three feet; thence south fifty and one quarter ($50\frac{1}{4}$) degrees west, twenty-one feet to a post in the southwesterly edge of said lot; thence north forty-six and one half

degrees (46½°) west, eighty-three feet to a post; thence north fifty and one quarter degrees (50¼°) east, eighty-five and one half feet (85½) to a post; thence south forty-two and one half degrees (42½°) east, one hundred and eighteen feet to a post; thence south forty-three and one half degrees west, fifty-eight feet to the place of beginning. The court further finds that at the time of the commencement of this suit, the plaintiffs then were, and still are, the owners in fee simple of the above described premises, and assess their damages at one cent.

It is therefore considered and adjudged by the court, that the said plaintiffs recover against the said defendant possession of the above described premises, and also his damages, according to the finding of the court, as well as his costs and charges herein expended, and that he have execution for their costs, and a writ of possession for said premises.

And afterwards, to wit, on Friday, the eighth day of July, in the year of our Lord one thousand eight hundred and fifty-three, in the July term, A. D. 1853, of said court, in the record of the proceedings thereof in said cause, the following order was entered, to wit:

VON PHUL and McGILL
vs.
WM. E. MASON. } Ejectment.

It is ordered that this cause be continued.

And afterwards, to wit, on Wednesday, the twenty-first day of December, in the year last aforesaid, in the December term, A. D. 1853, of said court, in the record of the proceedings thereof, in said cause, the following order was entered, to wit:

HENRY VON PHUL and
THEODORE L. McGILL
vs.
WILLIAM E. MASON. } Ejectment.

By agreement of the parties, it is ordered that this cause be stricken from the docket.

NORTHERN DISTRICT OF ILLINOIS, *ss.*

I, William H. Bradley, clerk of the circuit court of the United States, for said northern district of Illinois, do hereby certify the foregoing transcript to be a true, full, and perfect copy from the record of all the proceedings which were had in the circuit court of the United States, for the district of Illinois, in the said entitled cause of Henry Von Phul and Theodore L. McGill against William E. Mason, as the same now appear of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court at my office in Chicago, in said district, this fifteenth day of April, A. D. 1857.

WILLIAM H. BRADLEY, *Clerk.*